

July 16, 2007

Brad Bohrer, Senior Counsel
First American Real Estate Solutions
4 First American Way
Santa Ana, California 92707

Re: Formal Complaint 07-FC-165; Alleged Violation of the Access to Public Records Act by the Montgomery County Auditor

Dear Mr. Bohrer:

This is in response to your formal complaint alleging the Montgomery County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying your request for an electronic copy of the most recent tax/assessment roll. I find that the Montgomery County Auditor is required by the APRA to provide an electronic copy of the requested records and may charge you a fee not to exceed the direct cost of providing the records in the electronic format you request.

BACKGROUND

You allege you first requested an electronic copy of the most recent tax/assessment roll from the Auditor on July 12, 2006. You indicate the Auditor originally agreed to provide the requested electronic copy but on October 4, 2006 the County Assessor contacted your employee and advised she had interceded and would not permit electronic duplication. You renewed your request to the Auditor on May 10, 2007. On May 14, the Auditor responded, indicating his office had not denied the initial request. In a subsequent conversation, the Auditor indicated he would consent to the data export by the outside records management vendor, Manatron, who would then bill you directly. On June 12 Manatron submitted a Letter of Authorization to the Auditor for his approval. One June 15, the Auditor advised your employee and Manatron the Letter of Authorization would need to be approved and sign by the County Board of Commissioners.

You filed a complaint on June 15, 2007, indicating you were doing so to preserve your rights under IC 5-14-3-9(i). The Auditor responded by counsel on June 27, 2007. I am enclosing a copy of the response for your reference. In his response, the Auditor indicates

authorization has been granted on June 25 to Manatron to provide an electronic copy of the data requested upon your payment of the fee associated with generating such.

ANALYSIS

The Montgomery County Auditor's office is a public agency for the purposes of the Access to Public Records Act. IC 5-14-3-2(l).

The public policy of the APRA is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. IC 5-14-3-1.

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the Access to Public Records Act. IC 5-14-3-3(a). "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. IC 5-14-3-2(m).

If (1) a person is entitled to a copy of a public record under this chapter; and (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the public agency must provide at least one copy of the public record to the person. IC 5-14-3-8(e). The public agency may charge a fee, uniform to all purchasers, that does not exceed the agency's direct cost of supplying the information in that form. IC 5-14-3-8(g). Here the Auditor contracts with an outside vendor for maintenance of its records management system. The Auditor may charge you a fee that does not exceed the direct cost the outside vendor will charge the Auditor to provide the electronic copy of the records you seek.

A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3.

It is my understanding you have requested the records in an electronic format (via 4mm, DAT, CD-ROM, email or FTP). Further, I understand from your complaint and attachments the Auditor's vendor, Manatron, is relatively easily able to create a copy of the public records you request. I do not understand it to be the case the medium you request is incompatible with the Auditor's data storage system or that you are asking the Auditor to reprogram its system to provide you with the records you request. If these elements are indeed true, I find the Auditor is required to provide a copy of the record to you pursuant to IC 5-14-3-8(e). Further, the Auditor may charge you a fee not to exceed the direct cost of supplying the information in the requested

form. It is my understanding the Auditor has authorized its vendor to provide the electronic copy to you at your expense.

CONCLUSION

For the foregoing reasons, I find that the Montgomery County Auditor is required by the APRA to provide an electronic copy of the requested records and may charge you a fee not to exceed the direct cost of providing the records in the electronic format you request. I further find the Auditor has complied with the APRA in authorizing its vendor to provide you the requested electronic copy at your expense.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Jeff Dossett, Montgomery County Auditor

N.B. The nature of the complaint in 07-FC-165 is similar to several other complaints filed by your office on the same date, specifically 07-FC-158, 07-FC-159, 07-FC-160, 07-FC-163, and 07-FC-164. Because the facts as well as responses from the County Auditor differ in each case, I have issued separate opinions. To the extent there are similar facts from one complaint to another not necessarily provided by the Auditor, my finding in the respective complaint should be construed as being the same as that in the complaint with the most similar fact pattern. For instance, if another county has an ordinance similar to that in 07-FC-163, the presence of such an ordinance prohibiting commercial use of the information would change my opinion.